

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9921 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HABIBMIYA CHHOTUMIYA MOGAL

Versus

COMMISSIONER OF POLICE AND ORS.

Appearance:

MR ANIL S DAVE for Petitioner

MR MA PATEL ASSTT.GOVERNMENT PLEADER
for Respondents.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/09/1999

ORAL JUDGEMENT

Heard learned advocate Mr. Anil S.Dave for petitioner and Mr. M.A.Patel, learned APP for respondents.

2. The petitioner has approached under Art.226 of the Constitution of India with a prayer to claim appropriate writ or direction to quash and set aside

order of detention dt. 12th November, 1998 passed by respondent no.1 in exercise of power conferred by Sec. 3(1) of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "PASA").

2. The petitioner has produced impugned order dt. 12th November, 1998 as well as Committal Order vide Annexure: B and grounds of detention supplied to the petitioner vide Annexure : C.

That the grounds of detention, inter alia, suggest the fact that the petitioner has been classified as "dangerous person" within the meaning of Sec.2(c) of the PASA, and respondent no.1 having come to the conclusion that in order to prevent the petitioner from indulging into criminal and antisocial activities, the provisions of general law are insufficient and thereby it is necessary to detain the petitioner so as to prevent him from continuing his criminal and antisocial activities which adversely affect to the maintenance of public order.

3. The grounds of detention disclose the fact that on 16th June, 1998, an offence was registered against the petitioner along with his accomplice at Aslali Police Station vide CR. No. 129/98 in respect to offences made punishable under Secs. 186, 504, 506(2), 332 read with 114 of I.P.Code. It is, inter alia, alleged that one Kamlesh Motibhai Shelot, a Senior Valuation Officer, Ahmedabad Municipal Corporation who was posted at Octroi Naka, Aslali, has given first information on 18th June, 1998 against the petitioner/detenu Maheebub Chhotumiya Mogal and his accomplice Habib Chhotumiya Mogal. It is alleged that on 15th June, 1998 around 10-00 p.m. when the informant was on duty at Aslali Octroi Naka, in the early morning hours about 4-30 a.m. (16-6-1998), one person entered the Octroi Naka and gave slap to one Mahesh Parekh who was a computer operator, and as Mahesh Parekh was about to telephone for police help, said person rushed and prevented Mahesh Parekh, not only that but he pushed him down on the ground. He was abusing the Superintendent of Octroi, T.G.Zalavadiya, and was loudly stating that why their trucks are being unloaded, and if the staff members of Octroi Department would not permit their trucks to pass without claim of octroi duty, the persons on duty would be killed; that the said person created atmosphere of terror. He has also raised his hand to beat the informant but the informant has caught hold of his hand; that in the mean while, one another person also entered into the Octroi cabin and he requested Mahesh Parekh to pardon his assailant, and

thereafter both of them went out side; that the assailant, while going out, gave fist blow to gunman Ramsinh Tadoriya, and thereafter both the persons went away on their Hero Honda; that on account of scuffle, the persons on duty at the said Octroi Naka gathered there and one of them stated the name of assailant as Mahebub Chhotumiya Mogal and another was Habib Chhotumiya Mogal (petitioner).

On the basis of above stated facts, crime was registered and investigated by Aslali Police. The petitioner was identified as assailant. A chargesheet is filed in the competent court and the matter is pending for trial.

4. Over and above the above stated incident of criminal activity, the sponsoring authority has placed before respondent no.1 statements of two witnesses. One of the witnesses has stated before the authority on assurance of anonymity that on 5th October, 1998, the petitioner/detenu came to his business premises around 10-00 a.m. along with his accomplice and told him to keep tins containing almonds. The witness refused to do so, believing that the petitioner/detenu having been indulging into activity of evading to pay octroi duty, if he would keep the goods, Octroi Department may raid his business premises. However on refusal of the witness, the petitioner/detenu got excited and dragged witness on public road near Chandola Lake and started beating him. Witness having raised alarm, the people gathered there and as such the petitioner/detenu took out knife from his pocket and threatened the persons gathered there. As such the people started running helter skelter and dispersed.

That according to other witness, on 28th October, 1998, the petitioner/detenu stopped the witness around 6-00 a.m. in the evening when he was passing through road near Chandola Lake. The petitioner/detenu asked the witness why he was supplying information about his criminal activity to the Police. That on account of his information, Police carried out raids on his premises; that witness stated that he has not been supplying any information. However the petitioner/detenu got excited and started beating the witness. On raising an alarm by the witness, people residing in the neighbourhood gathered there. However the petitioner/detenu took out knife from his pocket and rushed towards the people gathered there and thereby people started running helter skelter and dispersed.

5. On the basis of above stated registered cases and information supplied by two witnesses, on assurance of anonymity, respondent no.1 concluded that the petitioner/detenu is a "dangrous person" within the meaning of Sec.2(c) of the Pasa; that provision of Sec.56 of Bombay Police Act is likely to consume time and thereby not sufficient to prevent the petitioner from continuing his prejudicial activity adversely affecting to the maintenance of public order and as such exercise of power under Sec.3(1) of the Pasa was found justifiable and hence the impugned order.

6. The petitioner has challenged the impugned order on numerous grounds. However during submission, learned advocate appearing for the petitioner restricted the contest to one important ground that live link between the alleged criminal and antisocial activity construed by respondent no.1 as detaining authority and the date on which the impugned order is passed, was snapped because of passage of time. That the petitioner has amended the petition and has raised a specific plea that delay has vitiated the subjective satisfaction of the detaining authority and as such the order is bad in law. However, though affidavit dt. 29th May, 1999 is filed by respondent no.1, no reasonable explanation for such delay has been placed on record and as such impugned order should be quashed and set aside. In order to support the submission, Shri Anil S.Dave has referred to and relied upon observations made by this Court in the matter of Special Civil Application No. 1306 of 1997 decided on 7th July, 1997 (Coram: M.S.Parikh, J.) and also in the matter of Special Civil Application No. 1662 of 1997 decided on 11th March, 1997 (Coram: M.S.Parikh, J.).

7. In the matter of Elesh N. Patel Vs. Commissioner of Police, Ahmedabad reported vide 1997(1) G.L.H. 381, this court has expressed the view that ipso facto, passing of the order of detention after a lapse of time of the incident is not fatal. In certain cases, delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority. On the basis of said observation, and relying on the dictum of Jagan Nath Biswas Vs. State of West Bengal reported vide AIR 1975 SC 1516, this Court (Coram : N.N.Mathur, J.) has quashed and set aside the order of detention on the ground of delay in passing the order of detention when not satisfactorily explained by the detaining authority.

8. Copies of order of Special Civil Application

No.1306 of 1997 and Special Civil Application No. 1662 of 1997 are supplied by learned advocate for the petitioner for perusal, and it appears that this court has endorsed the view expressed by Apex Court in several matter and has followed dictum that if there is sufficient time spent which has snapped the live link between alleged criminal and antisocial activity adversely affecting to the maintenance of public order and action taken against the detenu under the Act would affect genuineness of the subjective satisfaction of the detaining authority.

9. On the basis of above stated proposition of law which is accepted as a part of law by this court, applying same to the fact in the present case, it has to be noted that the incident of criminal and antisocial activity involving the petitioner appears to have been registered on 16th June, 1998. While statements of witnesses disclose the incidents of 5th October, 1998 and 28th October, 1998 respectively. However the impugned order appears to have been passed on 12th November, 1998. That despite raising specific contention vide Para 17-C, the respondent no.1 has failed to explain the delay in the affidavit which is subsequently filed by the respondent no.1 and hence I am constrained to hold that delay in taking action by passing the impugned order of detention has vitiated the order and as such it is bad in law.

10. On the basis of aforesaid discussions, the petition is allowed. The order of detention dt. 12th November, 1998 passed by the Commissioner of Police, Ahmedabad is hereby quashed and set aside. The petitioner -Habibmiya Chhotumiya Mogal is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

Date:6/9/1999. -----
(ccshah)